

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

ORIGINAL OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION



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AZ CORP COMMISSION
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DATE: DECEMBER 3, 2001

DOCKET NO: T-00000A-97-0238

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda.
The recommendation has been filed in the form of an Order on:

QWEST CORPORATION
(CHECKLIST ITEM NO. 7)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 12, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 18, 2001 and DECEMBER 19, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF U. S. WEST
COMMUNICATIONS, INC.'S COMPLIANCE
7 WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

DECISION NO. _____

8 **ORDER**

9 Open Meeting
December 18 and 19, 2001
10 Phoenix, Arizona

11 **BY THE COMMISSION:**

12 Having considered the entire record herein and being fully advised in the premises, the
13 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. On February 16, 2001, the Commission issued Decision No. 63385, conditionally
16 approving Qwest Corporation's ("Qwest") compliance with Section 271 of the Federal
17 Telecommunications Act of 1996 ("1996 Act") Checklist Item No. 7 - 911/E911 Directory
18 Assistance and Operator Services.

19 2. The 1996 Act added Section 271 to the Communications Act of 1934. The purpose of
20 Section 271 is to specify the conditions that must be met in order for the Federal Communications
21 Commission ("FCC") to allow a Bell Operating Company ("BOC"), such as Qwest Corporation
22 ("Qwest" or the "Company"), formerly known as US WEST Communications, Inc. ("US WEST")¹ to
23 provide in-region interLATA services. The conditions described in Section 271 are intended to
24 determine the extent to which local phone service is open to competition.

25 3. Section 271 (c)(2)(B) sets forth a fourteen point competitive checklist which specifies
26 the access and interconnection a BOC must provide to other telecommunications carriers in order to
27 satisfy the requirements of Section 271. Section 271(c)(2)(B)(vii) requires a BOC desiring to make an

28 ¹ For purposes of this Order, all references to US WEST have been changed to Qwest.

1 application pursuant to Section 271 to provide or offer to provide "[n]ondiscriminatory access to (I)
2 911 and E911 services; (II) directory assistance services to all the other carrier's customers to obtain
3 telephone numbers; and (III) operator call completion services."

4 4. In Decision No. 63385, the Commission found that all issues raised in the Arizona
5 Workshops were resolved and that Qwest met the requirements of Checklist Item 7, subject to Qwest
6 updating its SGAT to incorporate language agreed upon by the parties in other region Workshops and
7 resolution by the Hearing Division of how to treat issues arising in other jurisdiction after the record
8 in Arizona has closed.

9 5. On March 26, 2001, the Hearing Division issued a Procedural Order setting forth
10 procedures for supplementing the record in Arizona for impasse issues that arise in other jurisdictions
11 after the Workshop has concluded in Arizona. Pursuant to the March 26, 2001, Procedural Order a
12 party may request to supplement the record in Arizona by filing a brief within 10 business days from
13 the date the issue is first declared at impasse in another jurisdiction. Other parties file replies to the
14 request within 7 business days, and Staff files a report, including its procedural and substantive
15 recommendations for the resolution of the dispute.

16 6. On April 9, 2001, AT&T Communications of the Mountain States, Inc. ("AT&T") and
17 WorldCom, Inc. ("MCIW") filed a Request to Supplement the Record regarding Checklist Items 3, 7,
18 and 10 with disputed issues raised in other region workshops.

19 7. On April 17, 2001 Qwest filed a response to AT&T's and MCIW's Request to
20 Supplement the Record Regarding Checklist Items 3, 7, and 10.

21 8. On November 2, 2001, Commission Staff filed its Supplemental Report on Checklist
22 Item 7.

23 9. MCIW objected to Qwest SGAT language that incorporated the concept of a "license"
24 with respect to using end user listings and directory assistance list information. MCIW states that in
25 Colorado, Qwest agreed to remove references to "license", but had not eliminated the same language
26 in its Arizona SGAT.

27 10. MCIW also asserted that in Qwest's Arizona SGAT Sections 10.5.1.1.2 and 10.6.2.1,
28 Qwest improperly restricts Directory Assistance ("DA") list information "solely" for purposes of

1 providing DA to local exchange end users.

2 11. The CLECs also asserted that Qwest's SGAT Sections 10.5.2.12 and 10.7.2.14 that
3 include forecasting obligations for CLECs with respect to the provision of operator services ("OS")
4 and DA UNEs are inconsistent with Qwest's announced intent to remove all forecasting requirements
5 for UNEs.

6 12. Qwest submitted revised SGAT language for Sections 10.4.2.4, 10.5.1.1.2, 10.6.2.1
7 and 10.6.2.1.1 that incorporates the consensus language developed in Washington and Colorado and
8 later uncontested in the Multi-State proceeding. Thus, Qwest believes the issue involving "license"
9 has been resolved.

10 13. Qwest states it has already revised Section 10.5.1.1.2 to eliminate the word "solely".
11 Qwest states that the parties agreed in Colorado and Washington that the term "solely" would not be
12 deleted from SGAT Section 10.6.2.1. Qwest states that it submitted the agreed upon language in the
13 Multi-State proceeding and neither MCIW nor AT&T objected to it.

14 14. Qwest states that it has agreed to delete the forecasting language regarding DA and
15 OS.

16 15. Staff confirms that Qwest has made the agreed upon changes to its SGAT. Staff
17 believes that all issues regarding Checklist Item 7 have been resolved.

18 16. Qwest has eliminated any reference to the concept of a "license" and the forecasting
19 requirement for DA and OS in the relevant SGAT Sections. Qwest removed the "solely" restriction
20 from SGAT Section 10.5.1.1.2, however, the restriction remains in SGAT Section 10.6.2.1. It
21 appears from Qwest's statements that the CLECs do not oppose the use of the term "solely" in
22 Section 10.6.2.1. Furthermore, we believe use of the term "solely" is appropriate in Section 10.6.2.1
23 which provides in relevant part:

24 Qwest grants to CLEC, as a competing provider of telephone Exchange
25 Service and telephone toll service, access to the DA List Information
26 solely for the purpose of providing Directory Assistance Service to its
local exchange end user customers, or for other incidental use by other
carrier's customers, subject to the terms and conditions of this
Agreement.

27 Therefore, we find all issues concerning Checklist Item No. 7 have been resolved and that Qwest has
28 complied with the requirements of Checklist Item No. 7, subject to Qwest passing relevant

performance measures in the OSS test.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Commission has jurisdiction over Qwest.

2. The Commission, having reviewed the Supplemental Report on Qwest's Compliance with Checklist Item No. 7 dated November 2, 2001, and conditioned upon Qwest's satisfactory compliance with the findings adopted herein, and further subject to Qwest passing relevant performance measurements in the third-party OSS test, concludes that Qwest has met the requirements of Section 271 pertaining to Checklist Item No. 7, and the Commission hereby approves and adopts the Supplemental Report on Qwest's compliance with Checklist Item No. 7.

ORDER

IT IS THEREFORE ORDERED that the Supplemental Report on Qwest's Compliance with Checklist Item No. 7 dated November 2, 2001, is hereby adopted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
JR:dap

1 SERVICE LIST FOR:

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271)

3 DOCKET NO.:

T-00000A-97-0238

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**IN THE MATTER OF QWEST CORPORATION'S
SECTION 271 APPLICATION**

ACC Docket No. T-00000A-97-0238

SUPPLEMENTAL REPORT ON QWEST'S COMPLIANCE

With

**CHECKLIST ITEM: NO. 7 - 911/E911, DIRECTORY
ASSISTANCE AND
OPERATOR SERVICES**

NOVEMBER 2, 2001

DECISION NO. _____

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On February 16, 2001 in Decision No. 63385, the Commission approved Checklist Item No. 7 - 911/E911, Directory Assistance and Operator Services.

2. In the Conclusions of Law portion of the approved Order, Qwest¹ was required to update its SGAT language agreed to in other region Workshops and resolution by the Hearing Division /Commission of the issue of how to treat issues arising in other State Workshops which the parties would like to bring back to Arizona after the record has closed.

3. On March 26, 2001, the Hearing Division of the Commission issued a procedural order indicating that a party may request to supplement the record in Arizona on a checklist item by filing a brief within 10 business days from the date the issue is first declared at impasse in another jurisdiction. Other parties were ordered to file replies to the request within 7 business days, and Staff shall file a report, including its procedural and substantive recommendations for the resolution for the dispute.

4. On April 9, 2001, AT&T Communications of the Mountain States, Inc. ("AT&T") and WorldCom, Inc. ("MCIW") (collectively referred to herein as "Joint Intervenors") filed a request to supplement the record on Checklist Items 3, 7 and 10 with disputed issues from other Region workshops. On October 12, 2001, Qwest filed its supplementary response.

5. The following issues have been disputed by AT&T and MCIW - references to "license" and "solely" and forecasting provisions.

B. DISCUSSION

1. Checklist Item No. 7

a. FCC Requirements

6. Section 271(c)(2)(B)(vii) of the Telecommunications Act of 1996 requires a 271 applicant to provide or offer to provide: "[n]ondiscriminatory access to -- (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."

¹ As of the date of this Report, U S WEST has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. For purposes of this Report, all references to U S WEST have been changed to Qwest.

b. Disputed Issues From Other State Workshops

1. Summary of CLEC Position

a. "License" and "Solely"

7. MCIW objected to Qwest's SGAT Sections 10.4.2.4, 10.5.1.1.2 and 10.6.2.1 stating that by using the concept of a "license", Qwest is improperly restricting CLECs' access to the DA list information which is contrary to requirements of Checklist Item 7. Id. at p. 26-27. According to SGAT Section 10.4.2.4, both Qwest and CLEC will grant one another a "license" to use end user listings and the directory assistance list information. Id. at p. 27. Qwest does not have the right to claim a copyright of mere facts. Id. The names, telephone numbers and addresses of Qwest's customers are simply facts, which are not subject to protection as intellectual property. Id. Thus, licensing of these pieces of factual data is not legally protected and would not be in the public interest. Id. Each party owns its respective end user and DA listing data and it is improper for Qwest to claim an intellectual right in such data supplied by the other party to the Agreement. Id. Qwest's attempt to claim licensing rights to the other party's data is inappropriate. Id.

8. In the Colorado workshop, Qwest agreed to remove all references to "license" in the Colorado SGAT Section 10.4.2.4, 10.5.1.1.2 and 10.6.2.1, thereby eliminating the impasse issue by revising these sections. Id. at p. 28-29. However, the original SGAT language is still in the SGAT in Arizona. Id. By retaining the concept of "license" in these provisions, Qwest is improperly restricting CLECs' access to the DA list information, contrary to the requirement of Checklist Item No. 7. Id. at p. 29-30.

9. MCIW also stated that in Qwest's Arizona SGAT, DA list information is improperly restricted "solely" for purposes of providing DA to local exchange and users in both Sections 10.5.1.1.2 and 10.6.2.1. Id. at p. 30. In Colorado, Qwest revised Section 10.5.1.1.2 to address this issue, but not in Section 10.6.2.1. Id. Qwest must incorporate the Colorado changes in Section 10.5.1.1.2 and eliminate the reference to "solely" in Section 10.6.2.1 to resolve this issue. Id.

b. Forecasting

10. Finally, Qwest has included in Sections 10.5.2.12 and 10.7.2.14 new forecasting obligations for CLECs with respect to the provision of operator services and directory assistance UNEs. Id. at p. 30. Qwest has since announced its intent to remove all forecasting requirements for UNEs. Id. These new provisions are inconsistent with this announcement and Qwest needs to rationalize these two seemingly conflicting positions. Id. Qwest also needs to clarify how it intends to use these forecasts and whether it intends to build trunks to meet the CLECs' forecasted needs. Id.

DECISION NO. _____

2. Summary of Qwest's Response

a. "License" and "Solely"

11. Qwest argued that in its Motion to Admit SGAT Changes filed with the Arizona Commission on February 12, 2001, Qwest submitted revised SGAT language for Sections 10.4.2.4, 10.5.1.1.2, 10.6.2.1, and 10.6.2.1.1 that incorporates the consensus language on this issue developed in Washington and Colorado and later uncontested in the Multi-State proceeding. Id. at p. 11. Qwest believes that all of MCIW and AT&T's concerns on this issue were resolved in the February 12 Motion to Admit SGAT Changes. Id.

12. Regarding the use of the term "solely", Qwest has already made the agreed upon revisions in Section 10.5.1.1.2 as reflected in Qwest's February 12 Motion to Admit SGAT Changes. Id. at p. 11-12. With respect to Section 10.6.2.1, the parties agreed in Colorado and Washington that the term "solely" would not be deleted from this provision. Id. Qwest submitted the identical agreed upon language in the Multi-State proceeding and neither MCIW nor AT&T raised an issue regarding Section 10.6.2.1. Id. The agreed upon language provides that CLECs can use Qwest's DA List Information for the purpose of providing DA service to their local exchange end user customers. Id. Qwest believes this issue has been resolved. Id.

b. Forecasting

13. AT&T and MCIW oppose forecasting language Qwest proposed in the multi-state proceeding for DA and OS. Id. at p. 12. Qwest states that it has agreed to delete this language from the Arizona SGAT and as such, this issue has been resolved. Id.

3. Discussion and Staff Recommendation

14. With respect to the terms "license" or "solely", Staff has verified that Qwest has submitted revised SGAT language for Sections 10.4.2.4, 10.5.1.1.2, 10.6.2.1, and 10.6.2.1.1 that incorporates the consensus language on this issue developed in Washington and Colorado and later uncontested in the Multi-State proceeding. As a result, Staff believes this issue is now closed.

15. Regarding AT&T's and MCIW's opposition to forecasting language, Staff has verified that Qwest deleted this language from the Arizona SGAT and as such, this issue has now been resolved and is closed.

c. Verification of Compliance

16. All outstanding issues on Checklist Item 7 have now been resolved. Based upon the testimony, comment and exhibits submitted, Staff recommends that Qwest be found to comply with the requirements of Checklist Item No. 7. Qwest's compliance is contingent upon its meeting any relevant performance measurements in the OSS test now underway in Arizona.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Checklist Item No. 7 requires Qwest to provide or offer to provide: "[n]ondiscriminatory access to -- (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."

8. Based upon the testimony, comment and exhibits submitted, Qwest complies with the requirements of Checklist Item No. 7.